UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMIE COLLINS, a single person,

Plaintiff,

v.

CITY OF DUVALL, a Washington State municipality, CORPORAL CHAD DAUGHERTY, individually and in his official capacity, LIEUTENANT GENE SANDERS, individually and in his official capacity, CHIEF OF POLICE GLENN MERRYMAN, individually and in his official capacity,

Defendants.

No. CV06-0998 MJP

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on motion for summary judgment by Defendant City of Duvall and individual Defendants Chad Daugherty, Gene Sanders and Glenn Merryman. Having reviewed the papers and pleadings submitted by the parties, the Court GRANTS Defendants' motion. Because the Court concludes that the officers did not violate Plaintiff's federal constitutional rights, the individual Defendants are entitled to qualified immunity for Plaintiff's federal claims. The Court further concludes that Defendants either did not violate Plaintiff's state constitutional rights, or that a reasonable officer would not have known that their conduct was unlawful. Therefore, they are entitled

to statutory immunity for Plaintiff's state claims. For the same reasons, Defendant City of Duvall is entitled to summary judgment on Plaintiff's municipal liability claims.

The reasons for the Court's order are set forth below.

Background

On June 7, 2003, Duvall police received a call from Heidi Collins, a records clerk for the Redmond Police Department. (Daugherty Decl. ¶ 5.) Calling from a hotel room in Monroe, Washington, Heidi asked to speak with an officer about family issues. (Id., Ex. A, at 1.) Duvall dispatch forwarded the information to Corporal Chad Daugherty, a Duvall police officer, who returned Heidi's call. (Id.) Heidi informed Corporal Daugherty that she was having problems with her husband, Plaintiff Jamie Collins, a Bellevue police officer. (Id.) Heidi claimed that the day prior, Plaintiff had been intimidating and verbally abusive, and that his behavior had carried over into the next morning. (Id. at 2.) After discussing Plaintiff's behavior with her brother, Heidi fled from her home to the hotel, where she contacted the police. (Id. at 3.)

Corporal Daugherty's interview with Heidi lasted approximately forty minutes. (Id. at 1.) After the interview, Corporal Daugherty contacted Duvall Police Chief Glenn Merryman to brief him on the issue. (Id. at 1; Merryman Decl. ¶ 5.) Thereafter, Corporal Daugherty and Lieutenant Gene Sanders, another Duvall police officer, traveled to Heidi's hotel to conduct a more thorough interview. (Daugherty Decl., Ex. A, at 1; Sanders Decl., Ex. A, at 1.) In the second interview, Heidi signed a sworn statement describing Plaintiff's abusive behavior in detail. (Daugherty Decl., Ex. B.)

In her written statement and during her interviews, Heidi claimed that her husband had become increasingly violent towards her over the past two years. Heidi described one incident from January 21, 2003, when Plaintiff pinned her to the bed, placed his hands on her throat, and threatened to kill her. (Daugherty Decl., Ex. A, at 1.) Heidi stated that the incident occurred after she refused to have sex with Plaintiff, (Daugherty Decl., Ex. B, at 5), and she believed that Plaintiff truly intended to kill her. (Daugherty Decl., Ex. A, at 4.) In her struggle to break free from her husband, Heidi believed

that she broke her thumb. (Id. at 1.) When Plaintiff released her, Heidi fled from the bedroom to the garage to hide. (Id. at 4.) She stated that while she was hiding, she considered running to a neighbor's house for help, but decided against it fearing that her husband might shoot the neighbors. (Id. at 4-5.) She also considered calling 911, but declined fearing Plaintiff's reaction. (Id. at 1.)

Heidi remembered a similar incident from March 2002, when Plaintiff pinned her to the bed and threatened her. (Daugherty Decl., Ex. B, at 6.) She could not remember the specific threats, but stated that after the incident, she had moved from the bedroom to the living room where Plaintiff confronted her with a firearm. (Daugherty Decl., Ex. A, at 6-7.) She also talked about Plaintiff's violent mood swings and penchant for breaking objects and damaging walls. (Id. at 6.) According to Heidi, Plaintiff acted deliberately to intimidate her, constantly using profanity, racking the slide of his pistol in bed, and sleeping with a loaded firearm at bedside. (Id. at 2.)

Heidi also remembered Plaintiff commenting on the widely publicized David Brame case in Tacoma in which an officer killed his wife. (Id. at 7.) Plaintiff intimated that if he were to kill Heidi, he would not be so obvious, and instead he would use a sniper rifle and kill her while she ate lunch. (Id.) Heidi claimed that Plaintiff was a sniper for the SWAT team. (Daugherty Decl., Ex. B, at 7.) On at least one occasion, Heidi slept with a knife under her bed for protection. (Browne Decl., Ex. A, at 11.) She also stated that Plaintiff had told her that if she ever tried to leave him and take part of his retirement money, he would have grounds to justifiably kill her. (Daugherty Decl., Ex. C, at 2.)

After the second interview, Corporal Daugherty and Lieutenant Sanders escorted Heidi to a different hotel in Everett, and returned to Duvall. (Daugherty Decl., Ex. A, at 6.) The officers discussed the matter with Chief Merryman, and they all agreed that there was probable cause to arrest Plaintiff for felony harassment and fourth degree assault, a gross misdemeanor. (Merryman Decl. ¶ 8.) Chief Merryman contacted the on-call prosecutor at the King County Prosecutor's Office, and he was

advised that they had a strong case for felony harassment and fourth degree assault.[1] (Id. at ¶ 7.) Immediately thereafter, Chief Merryman ordered the officers to arrest Plaintiff. (Id.)

At approximately 4:00 a.m. on July 8, 2003, the three officers, joined by officer Chris Daugherty, traveled to Plaintiff's residence to effect the arrest. (Collins Decl. ¶ 7; Daugherty Decl., Ex A, at 7.) One of the officers rang the doorbell and Plaintiff opened the door. (Collins Decl. ¶ 7.) Plaintiff invited the officers into his home but they declined. (Id.) Responding to the officers, Plaintiff stepped outside onto the front porch and was immediately arrested. (Id.; Daugherty Decl., Ex. A, at 7.)

On June 26, 2006, Plaintiff filed suit against the City of Duvall and Officers Daugherty, Sanders and Merryman in Washington State Superior Court, alleging violations of his state and federal constitutional rights. (Compl. at 4-8.) Defendants removed the action to Federal District Court on July 11, 2006. (Dkt. No. 1.) Defendants have moved for summary judgment on all of Plaintiff's claims. The individual Defendants seek summary judgment, claiming immunity from suit for Plaintiff's federal claims under the doctrine of qualified immunity, and immunity from suit for Plaintiff's state claims under RCW 10.99.070. Defendant City of Duvall also seeks summary judgment on the issue of municipal liability.

Analysis

I. Summary Judgment Standard

Summary judgment is not warranted if a material issue of fact exists for trial. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 516 U.S. 1171 (1996). The underlying

[1] Although Plaintiff asks the Court to strike Chief Merryman's discussion with the prosecutor as hearsay, the Court declines to do so. The Court may consider a hearsay statement in determining whether the officers had probable cause to arrest because the relevant inquiry is what the arresting officers knew at the time, not whether the statement was true. See Woods v. City of Chicago, 234 F.3d 979, 985-87 (7th Cir. 2000) (holding that hearsay statements are admissible not for the truth, but for the effect that the statements had on the officers).

facts are viewed in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). "Summary judgment will not lie if . . . the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party moving for summary judgment has the initial burden to show the absence of a genuine issue concerning any material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970). Once the moving party has met its initial burden, the burden shifts to the nonmoving party to establish the existence of an issue of fact regarding an element essential to that party's case, and on which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). To discharge this burden, the nonmoving party cannot rely on its pleadings, but instead must have evidence showing that there is a genuine issue for trial. Id. at 324.

II. Federal Qualified Immunity for the Individual Officers

The Supreme Court has established a two part test for evaluating questions of qualified immunity on summary judgment. See Saucier v. Katz, 533 U.S. 194, 201 (2001). First, the court must determine whether, in the light most favorable to the party alleging the injury, the officer's conduct violated a constitutional right. Id. If the court determines that no constitutional violation occurred, there is no further inquiry and the defendant is entitled to qualified immunity. See id. However, if the court determines that a constitutional violation did occur, the next step is to determine whether the constitutional right was clearly established. Id. A right is clearly established when, in light of the specific context of the case, it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. Id. at 201-02. If the court determines that the right was not clearly established, then the defendant is entitled to qualified immunity. Id. at 202.

Plaintiff alleges two violations of his Fourth Amendment right to be free from unreasonable seizure. First, Plaintiff argues that the officers violated his constitutional rights when they arrested him

for felony harassment without probable cause. Second, Plaintiff argues that the officers violated his constitutional rights when they arrested him in his home without a warrant.

A. Arrest Without Probable Cause

Plaintiff does not argue that the officers lacked probable cause to arrest him for fourth degree assault. Furthermore, although a Washington State Superior Court found that there was probable cause to arrest Plaintiff on that charge, (Stellwagen Decl., Ex. A, at 3), Plaintiff does not challenge that ruling here. Although Plaintiff's failure to (1) address probable cause for the fourth degree assault charge; and (2) challenge the state court's probable cause finding; is likely dispositive here, because the parties have not addressed these issues in their motion briefing, the Court will perform an independent probable cause analysis and decide the probable cause issue on its merits.

"[P]robable cause exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that the suspect had committed a crime." Peng v. Mei Chin Penghu, 335 F.3d 970, 976 (9th Cir. 2003). "In establishing probable cause, officers may not solely rely on the claim of a citizen witness that he was a victim of a crime, but must independently investigate the basis of the witness' knowledge or interview other witnesses." Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001) (citing Fuller v. M.G. Jewelry, 950 F.2d 1437, 1444 (9th Cir. 1991)). However, "[a] sufficient basis of knowledge is established if the victim provides facts sufficiently detailed to cause a reasonable person to believe a crime had been committed and the named suspect was the perpetrator." Peng, 335 F.3d at 978 (quoting Fuller, 950 F.2d at 1444).

Plaintiff was arrested on charges of felony harassment and fourth degree assault. Pursuant to Washington state law, a person commits harassment when: (1) without lawful authority, the person knowingly threatens to cause bodily injury immediately or in the future to the person threatened; and (2) the person, by words or conduct, places the person threatened in reasonable fear that the crime will be carried out. RCW 9A.46.020(1). Similarly, although the elements are not statutorily defined, a

person commits fourth degree assault by: (1) an attempt, with unlawful force, to inflict bodily injury on another; (2) an unlawful touching with criminal intent; or (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm. See State v. Aumick, 126 Wn.2d 422, 426 n.12, 894 P.2d 1325 (1995).

Plaintiff argues that the officers did not have probable cause to arrest him for felony harassment because the officers improperly relied on Heidi Collins' inconsistent allegations and they should have performed an additional investigation. Plaintiff challenges the consistency of several of Heidi's statements, including her claims that: (1) Plaintiff knocked holes in the walls of their home; (2) Plaintiff was a SWAT team sniper; (3) Plaintiff choked her on January 21, 2003; (4) she injured her thumb in the January incident; (5) she contacted her brother about the January incident; and (6) she slept with a knife for protection. Plaintiff argues that these statements are untrue, and that the officers could have discovered this by performing further investigation. Plaintiff argues that had they done so, they would have discovered these inconsistencies in Heidi's statements, which would have prompted them to investigate her allegations even further. In support, Plaintiff cites a line of cases for the proposition that an officer may not rely solely on the statement of a witness to establish probable cause. See, e.g., Fuller, 950 F.2d at 1444.

However, further investigation was unnecessary for two reasons. First, most of the excerpts from Heidi's statements cited by Plaintiff are not inconsistent. Defendants have persuasively refuted the alleged inconsistencies. (See, e.g., Reply at 3-6, 11 n.7, and declarations cited therein.) Furthermore, to the extent Heidi's statement is inconsistent with facts later discovered, such inconsistency is irrelevant and immaterial to the determination of probable cause. See Gramenos v. Jewel Cos., 797 F.2d 432, 439 (7th Cir. 1986) ("Probable cause does not depend on the witness turning out to have been right; it's what the police know, not whether they know the truth, that matters."); see also Peng, 335 F.3d at 979 (holding that inconsistencies in incidental facts are immaterial to a finding of probable cause).

Second, the cases cited by Plaintiff are inapposite because they involve situations in which the officer came upon information conflicting with the witness' statement that should have put him on notice that further investigation was warranted. See, e.g., Merriman v. Walton, 856 F.2d 1333 (9th Cir. 1988) (holding the officer did not have probable cause to arrest a suspect for kidnapping based solely on a report by a witness because the officer had learned that the victim had returned home, could not remember the incident, and a statement by the suspect contradicted the witness' version of events). In the present case, nothing placed the officers on notice that further investigation was necessary. Because Heidi did not contradict herself during the interviews, the officers had no reason to question her credibility. See United States v. Harness, 453 F.3d 752, 754 (6th Cir. 2006) (holding that an eyewitness account is sufficient for probable cause unless the officer has reason to believe "that the eyewitness is lying, did not accurately describe what he had seen, or was in some fashion mistaken regarding his recollection of the confrontation"); Gramenos, 797 F.2d at 439 ("A 'prudent' officer may balk . . . if the person leveling the accusation is babbling or inconsistent.").

Furthermore, the surrounding circumstances supported Heidi's allegations. First, Heidi only contacted the police after fleeing her home to a hotel. Next, she gave a detailed statement describing threats and injuries that established the elements of harassment and fourth degree assault. The sufficiency of her account was confirmed by the on-call King County Prosecutor which the officers relied upon. Finally, the officers knew that Heidi worked for the Redmond Police Department, and that she was familiar with domestic violence investigations. They also knew that Heidi's employment placed her in a unique position to know the consequences of making false allegations in her sworn affidavit. Each of these factors supported the credibility of Heidi's statements and obviated the need for further investigation.

Plaintiff also argues that Heidi's statement was insufficient to establish probable cause because of the lapse of time between the January incident and her report to police in July. In support of his argument, Plaintiff cites a Seventh Circuit case holding that "[a] 'prudent' officer may balk if the

person claiming to be an eyewitness strolls into the police station and describes a crime from long ago. . . ." Gramenos, 797 F.2d at 439. However, Gramenos specifically states that a prudent officer "may balk" if the person describes a crime from long ago. In the present case, despite the delay in reporting the incidents, Heidi provided a sufficiently detailed account of Plaintiff's conduct to cause a reasonable person to believe a crime had been committed. In two lengthy interviews, Heidi recounted a long established pattern of abuse by Plaintiff. She also provided a detailed description of the January 2003 incident when Plaintiff threatened to kill her and injured her thumb. In addition, Heidi had a good explanation for her delay in reporting the incident. Heidi stated that she was terrified of what Plaintiff might do if she ever reported anything. (Sanders Decl., Ex A, at 4; Browne Decl., Ex. A, at 5.) She was also afraid that no one would believe her because Plaintiff was a police officer and he had previously stated that he would tell everyone that she was crazy if she ever reported anything. (Sanders Decl., Ex A, at 4; Browne Decl., Ex. A, at 5.)

Because a reasonable officer would have no reason to distrust the veracity of Heidi's allegations, her statements are sufficient to establish probable cause to arrest Plaintiff for felony harassment and fourth degree assault. First, Heidi alleged that Plaintiff had threatened to kill her and that she believed the threats. Based on her statement, Heidi's fears were reasonable under the circumstances because she described an escalating pattern of abuse by Plaintiff. Therefore, Heidi's statement established both elements of felony harassment: (1) Plaintiff had knowingly threatened her with bodily injury in the future; and (2) Plaintiff's pattern of abuse placed Heidi in reasonable fear that the crime would be carried out. Second, Heidi alleged that Plaintiff pinned her to the bed and injured her thumb in January. Heidi's allegation was sufficient to satisfy the elements of assault because it establishes both: (1) an attempt to inflict bodily injury on another; and (2) an unlawful touching with criminal intent. Heidi's description of Plaintiff's pattern of abuse also satisfies the elements of an assault because it demonstrates that Plaintiff placed Heidi in apprehension of future harm.

Accordingly, the officers had probable cause to arrest Plaintiff for felony harassment and fourth degree assault.

B. Warrantless In-Home Arrest

The Fourth Amendment prohibits police from making a nonconsensual entry into a suspect's home in order to effect a warrantless arrest. See Payton v. New York, 445 U.S. 573, 576 (1980). As the Supreme Court explained in Payton:

> The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home - a zone that finds its roots in clear constitutional terms . . . [therefore] the Fourth Amendment has drawn a firm line at the entrance to the house.

Id. at 589-90. However, the Supreme Court has upheld the warrantless arrest of a defendant who was standing in the frame of her doorway because she had voluntarily exposed herself to public view. United States v. Santana, 427 U.S. 38, 42 (1976). For the same reason, the Ninth Circuit has held that a warrantless arrest is proper when a suspect voluntarily opens the door of his dwelling in response to a noncoercive knock by the police. See United States v. Vaneaton, 49 F.3d 1423, 1426 (1995), cert. denied, 516 U.S. 1176 (1996).

Plaintiff argues that the police needed a warrant because he was arrested in his home, not in a public place. When evaluating whether an arrest occurs in-home or in a public place, it is the location of the arrested person, and not the arresting agents, that is determinative. See United States v. Johnson, 626 F.2d 753, 757 (9th Cir. 1980), aff'd, 457 U.S. 537 (1982). Plaintiff states that he was inside his home when the officers arrived, and opened the door in response to the doorbell. (Collins Decl. ¶ 7.) Plaintiff claims that he felt obligated to comply when the officers asked him to step outside. (Id.) Plaintiff argues that he was compelled to leave his home, and therefore his arrest outside his home is equivalent to arrest in his home. In support of his argument, Plaintiff cites a line of cases holding that a person's liberty is restrained, in violation of the Fourth Amendment, when the police conduct "would have communicated to a reasonable person that he was not at liberty to ignore

the police presence and go about his business." See, e.g., Florida v. Bostick, 501 U.S. 429, 437 (1991).

However, Plaintiff's warrantless arrest was not a constitutional violation. Plaintiff cannot escape the fact that he exposed himself to public view, and therefore warrantless arrest, when he answered the door. Plaintiff does not allege that the officers acted deceptively or coercively when they approached him. He admits in his declaration that he voluntarily opened the door in response to the doorbell. (Collins Decl. ¶ 7.) It was not until after Plaintiff voluntarily opened the door and exposed himself to the public that Plaintiff claims he was coerced by the officers to exit his home. At that point, it was too late for Plaintiff to claim coercion because, by opening the door, he exposed himself in a public place. See Vaneaton, 49 F.3d at 1427. Under clear Ninth Circuit precedent, such exposure is sufficient to satisfy the Fourth Amendment's requirement for a warrantless arrest. See id.

Because the Court concludes that the officers' conduct did not violate Plaintiff's federal constitutional rights, there is no need to continue with the Saucier qualified immunity analysis. The officers are entitled to qualified immunity on Plaintiff's federal claims.

III. Municipal Liability for Plaintiff's Federal Claims

Although the City of Duvall is not entitled to qualified immunity, it is not liable for Plaintiff's federal claims unless Plaintiff establishes a violation of his federal constitutional rights. See Monell v. New York City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). Because the Court concludes that the officers' conduct did not violate Plaintiff's federal constitutional rights, Defendant City of Duvall is entitled to summary judgment on Plaintiff's federal claims.

IV. State Statutory Immunity for the Individual Officers

Because all of Plaintiff's state law claims are predicated on the lawfulness of Plaintiff's arrest, Defendants have claimed statutory immunity under RCW 10.99.070.[2] The statute provides as follows:

> A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

Although Defendants have moved for summary judgment on all of Plaintiff's claims, neither party has devoted significant discussion to the issue of statutory immunity for Plaintiff's state law claims. However, Washington courts have held that the standard for statutory immunity under RCW 10.99.070 is the same as the standard for qualified immunity under federal law. See Estate of Lee v. City of Spokane, 101 Wn. App. 158, 2 P.3d 979 (2000) (holding that there was no difference "between the question of good faith [in RCW 10.99.070] and the question of federal immunity"). Therefore, the Court must determine: (1) whether Plaintiff's constitutional rights were violated by the arrest; and (2) if Plaintiff's rights were violated, whether the right was clearly established such that a reasonable officer would have known that the arrest was unlawful. See Saucier, 533 U.S. at 201-02.

As with his federal claims, Plaintiff alleges two violations of his state constitutional right to be free from intrusions into his private affairs. See Wash. Const. Art. I, § 7. First, Plaintiff argues that the officers violated his state constitutional rights when they arrested him without probable cause. Second, Plaintiff argues that the officers violated his state constitutional rights when they arrested him in his home without a warrant.

A. Arrest Without Probable Cause

Under Washington law, the standard for probable cause is the same as the federal standard. See State v. Potter, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006). Therefore, Plaintiff's state law

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[2] State statutory qualified immunity should not be confused with state common law qualified immunity. The latter has a different analysis and is inapplicable in domestic violence situations. See Gurno v. Town of LaConner, 65 Wn. App. 218, 227-28, 828 P.2d 49 (1992).

claims based on arrest without probable cause fail because the officers had probable cause to arrest Plaintiff on both charges.

B. Warrantless In-Home Arrest

The standard for warrantless arrest inside a suspect's home is different in Washington than the federal standard. "In Washington, absent exigent circumstances, the police are prohibited from arresting a suspect while he or she is standing within the doorway of the residence." State v. Solberg, 122 Wn.2d 688, 697, 861 P.2d 460 (1993). Consequently, although Plaintiff's opening of the door was sufficient to satisfy federal constitutional requirements for a warrantless arrest, it is insufficient to satisfy the requirements of article 1, section 7, of the Washington State Constitution. See id. at 697, n.7. However, Washington courts have held that absent evidence of coercion, a warrantless arrest of an individual that has voluntarily exited the home is lawful. See Solberg, 122 Wn.2d at 699-701.

Plaintiff argues that he was coerced into leaving his home by the officers when they arrived at his home at 4:00 a.m. Although Defendants have proffered considerable evidence opposing Plaintiff's assertion, the Court may not weigh the strength of the evidence and must construe all facts in favor of Plaintiff. Accordingly, the Court must consider Plaintiff's statement that he "felt obligated to step outside and did not feel free to resist the officers' commands," (Collins Decl. ¶ 7), as true for purposes of summary judgment. Therefore, despite the weakness of Plaintiff's evidence, Plaintiff has established a genuine issue of material fact sufficient to avoid summary judgment on the issue of coercion. Because there is a factual dispute concerning whether Plaintiff was coerced to step outside of his home, the Court cannot determine whether a constitutional violation occurred when the officers arrested Plaintiff without a warrant.

However, even if Plaintiff's state constitutional rights were violated, the officers are entitled to statutory qualified immunity under the second prong of the Saucier analysis. Plaintiff's right to be free from in-home arrest without a warrant was not 'clearly established' because it would not have been clear to a reasonable officer that the arrest was unlawful. First, the officers did not have access to

Plaintiff's internal thought processes, and therefore they could not perceive his internal feeling of coercion. Instead, the officers had to rely on Plaintiff's external, objective manifestations to assess his state of mind. Accordingly, from a reasonable officer's perspective, Plaintiff's conduct suggested that his decision to step outside was voluntary. Plaintiff initiated contact with the officers by inviting them into his home. In addition, had the officers accepted his invitation into the home, they could have arrested him immediately without raising any constitutional concerns. See State v. Cyrus, 66 Wn. App. 502, 832 P.2d 142 (1992). Second, the officers knew that Plaintiff was a police officer, and that he was familiar with police procedure and his constitutional rights. It would also be reasonable to conclude that, as a police officer, Plaintiff was less likely than an ordinary citizen to be intimidated or surprised by police officers standing at his door. From a reasonable officer's perspective, this information suggests that Plaintiff voluntarily stepped outside of his home. Therefore, Plaintiff's right was not clearly established because it would not have been clear to a reasonable officer that Plaintiff was coerced into stepping outside of his home.

The Supreme Court has stated that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Hunter v. Bryant, 502 U.S. 224, 229 (1991). Because the Court concludes that a reasonable officer would not have known that Plaintiff's arrest was unlawful, Defendant officers have satisfied the second prong of the Saucier analysis. Therefore, the officers are entitled to statutory immunity under RCW 10.99.070 on all of Plaintiff's state law claims.

V. Municipal Liability for Plaintiff's State Claims

Unlike federal law, Washington applies the doctrine of respondeat superior to municipalities. See Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 126-27, 829 P.2d 746 (1992). Accordingly, municipalities in Washington enjoy the immunity of their agents. Id. Therefore, because the Court concludes that the officers are entitled to statutory immunity under RCW 10.99.070 for Plaintiff's state claims, Defendant City of Duvall is also entitled to summary judgment on Plaintiff's state claims.

Conclusion

The officers' conduct in this case did not violate Plaintiff's federal constitutional rights. The officers had probable cause to arrest Plaintiff for felony harassment and fourth degree assault, and the warrantless arrest occurred in a public place. Furthermore, the officers did not violate Plaintiff's state constitutional rights to the extent Plaintiff alleges unlawful arrest without probable cause. Although the Court cannot at this stage determine whether the officers violated Plaintiff's state constitutional rights when they arrested him without a warrant, the Court is satisfied that a reasonable officer would not have known that the arrest was unlawful. Accordingly, Defendants are entitled to summary judgment on the issues of qualified immunity, statutory immunity and municipal liability. Because the Court concludes that Defendants are either immune from suit or not subject to liability, the Court ORDERS that all of Plaintiff's claims are dismissed with prejudice.

The Clerk is directed to send copies of this order to all counsel of record.

Dated: March 28, 2007.

s/Marsha J. Pechman
Marsha J. Pechman
United States District Judge